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HONORABLE BARBARA J. ROTHSTEIN

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CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

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2002 JUN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

cc: Counsel, BJR, Financial

IN RE: PHENYLPROPANOLAMINE  
(PPA) PRODUCTS LIABILITY  
LITIGATION.

This document relates to all actions.

MDL Docket No. 1407

AMENDED CASE MANAGEMENT  
ORDER NO. 8,  
ESTABLISHING PLAINTIFFS'  
LITIGATION EXPENSE FUND  
TO COMPENSATE AND  
REIMBURSE ATTORNEYS FOR  
SERVICES PERFORMED AND  
EXPENSES INCURRED FOR  
COMMON BENEFIT [PROPOSED]

AND NOW, THIS 8th DAY OF July, 2002, it is hereby  
ORDERED, ADJUDGED AND DECREED that:

**A. Set Aside for Counsel Fees and Costs in MDL 1407**

1. The Court finds that this litigation has advanced to the point that it is appropriate to establish a fair system for the sequestration of a certain percentage of all payments by defendant(s) to plaintiff(s) in fulfillment of obligations to settle claims of plaintiffs from time to time as well as to satisfy judgments that may result in some

AMENDED CASE MANAGEMENT ORDER NO. 8,  
ESTABLISHING PLAINTIFFS' LITIGATION  
EXPENSE FUND (MDL Docket No. 1407) – Page 1

LEVINSON FRIEDMAN, P.S.  
PACIFIC BUILDING  
720 THIRD AVENUE, SUITE 1800  
SEATTLE, WA 98104-1845  
(206) 624-8844  
fax (206) 624-2912

ORIGINAL

WAS

1 instances (all such payments hereinafter referred to as "claim payments"). The funds so  
2 sequestered are to be available to provide for reimbursement of costs and payment of  
3 attorneys' fees to the Plaintiffs' Steering Committee ("PSC") and other attorneys who  
4 have been authorized by the PSC, pursuant to the Court's "Order Appointing Members  
5 to Plaintiffs' and Joint Committees" (entered Jan. 17, 2002), to perform work for the  
6 benefit of plaintiffs in MDL 1407 and any state-court counsel that agrees to be  
7 coordinated hereunder (hereinafter the "Common Benefit Attorneys"), subject to a  
8 proper showing in the future.

11 2. Before making any claim payment to a plaintiff whose action has been  
12 subject to coordinated pretrial proceedings in MDL 1407, defendants shall deduct from  
13 such payments an amount equal to four (4) percent for the federal court recoveries and  
14 three (3) percent for the state court coordinating case recoveries of the aggregate of the  
15 amount being paid and any amounts to be paid to the plaintiff in the future; and shall  
16 pay such sum as hereinafter provided for deposit into the MDL 1407 Fee and Cost  
17 Account. In measuring the gross amount due or to become due to any plaintiff as such  
18 claim payments, the defendant shall include the present value of any fixed and certain  
19 payments to be made in the future.

21 3. The requirements of paragraph 2 shall apply regardless of whether a  
22 plaintiff's case is disposed of during the time it is on the docket of the transferee court,  
23 or following remand or transfer from the transferee court to another federal district court  
24 for trial, or transfer to other district courts in accordance with 28 U.S.C. § 1404 or other  
25 provisions of law. The obligation shall follow the case to its final disposition in any  
26 United States court, including a court having jurisdiction in bankruptcy.

1  
2 4. As a condition of appointment made by this Court of any counsel to any  
3 committee, counsel deemed to have agreed to the terms of paragraph 2 for all said  
4 counsel retaining any recovery in both federal and state forums, however, recoveries in  
5 federal forums shall be subject to a four (4) percent assessment and recoveries in state  
6 forums (or unfilled cases that result in a recovery) shall only be subject to a three (3)  
7 percent assessment.

8  
9 5. State Court counsel who wish to obtain the PSC's proprietary attorney  
10 work product described herein shall voluntarily agree to the terms of this Order upon  
11 execution of the express written agreement attached hereto as "Exhibit 1". 1 No State  
12 Court litigant will be subject to a tax, fee, assessment or other charge imposed by this  
13 Court except upon execution of an express written agreement with the PSC to share the  
14 PSC's proprietary attorney work product. For the purposes of this Order, "proprietary  
15 attorney work product" of the PSC shall not include fact depositions taken in these MDL  
16 proceedings, transcripts and videotapes thereof and/or exhibits thereto, and shall not  
17 include any documents produced in PPA litigation by any party or by any non-party  
18 pursuant to any Notice of Subpoena served in these MDL proceedings.

19  
20 Accordingly, no tax, fee, assessment or other charge will be imposed on  
21 any State Court litigant by virtue of attending and participating in fact depositions  
22 conducted in this MDL proceedings, and/or use by any party of transcripts, videotapes  
23 and/or exhibits from such depositions or documents produced in the PPA MDL litigation  
24 in a State Court Case. Before making any claim payment to a state court plaintiff who  
25

26  
27 1 The proposed Agreement for state court attorneys who voluntarily agree to  
28 the use of the MDL work product is attached hereto as "Exhibit 1" .

1 has voluntarily agreed to coordinate by accepting the terms of this CMO, defendants  
2 shall withhold from such payments an amount equal to three (3) percent of the  
3 aggregate of the amount being paid and any amounts to be paid in the future; and shall  
4 pay such sum as herewith provided for deposit into the MDL 1407 fee and cost account.  
5

6 The PSC and each defendant subject to this Order shall promptly notify defendant's  
7 liaison counsel of any state court attorney who they have reason to believe is a  
8 Common Benefit Attorney.  
9

10 6. Defendants shall have primary responsibility for withholding the four  
11 percent (4%) and three percent (3%) set-off of the claim payments and tendering such  
12 sums to the MDL 1407 Fee and Cost Account. If, however, a defendant fails to do so,  
13 in addition to the Court's power generally, including the exercise of its powers to compel  
14 payment by defendant in compliance with this Order, the Court, under appropriate  
15 circumstances, can be expected to seek such payment from the plaintiff and/or his or  
16 her counsel under terms that are just and equitable.  
17

18 7. The Court shall cause the Defendants to deposit the set-off payments, as  
19 provided in this Order, into the Registry of this District Court in an interest-bearing  
20 account. All funds in the account will be held as funds subject to the direction of the  
21 Court.  
22

23 8. The Defendants' Co-Lead Counsel shall maintain detailed records which  
24 identify the plaintiffs and plaintiffs' counsel's names, current address and telephone  
25 numbers, civil actions or other identifying number, amount of deposit, date of deposit,  
26 identification of the parties contributing to the amount deposited (and any allocation if  
27 more than one contribution is being made), and other information that may be required  
28

1 by the circumstances. All such records shall be maintained as highly confidential  
2 material and the only persons with access to such records shall be the Court and  
3 Defendants' Co-Lead Counsel. Plaintiffs' Co-Lead Counsel shall have access to the  
4 information limited only to the total amount of funds in the account, but not to the  
5 particularized information as to individual plaintiffs or individual dollar amounts.  
6

7 9. Each party who is in any way affected by the creation of an obligation to  
8 make a claim payment is jointly and severally liable for promptly reporting to the  
9 Registry of this District Court and the PSC the terms of any settlement or judgment that  
10 may be subject to this Order as well as the information described in paragraph 8 so the  
11 Court and Co-Lead Counsel can monitor compliance with this Order.  
12

13 10. Upon a proper showing, the Common Benefit Attorneys will be entitled to  
14 receive an award of counsel fees and reimbursement of out-of-pocket litigation  
15 expenses to be paid from the MDL 1407 Fee and Cost Account in such amounts as are  
16 determined by the Court, after a hearing, based on the appropriate and controlling law.  
17 In making such an award, the Court will first determine the amount of costs for which  
18 reimbursement is appropriate. The amount remaining in the MDL 1407 Fee and Cost  
19 Account after deducting the amount of costs awarded by the Court will be available for  
20 any award of counsel fees. In making an award of counsel fees to the Common Benefit  
21 Attorneys and in apportioning any fee award among those attorneys, appropriate  
22 consideration will be given to the experience, talent, and contribution made by each  
23 Common Benefit Attorney who seeks to recover counsel fees from the MDL 1407 Fee  
24 and Cost Account, provided, however, that the Court will only consider compensation  
25 for those services which were authorized by the PSC.  
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1  
2 11. Any sum ordered to be paid by the Court pursuant to this Order as an  
3 award of counsel fees shall be deducted from the gross recovery that any plaintiff would  
4 have been entitled to receive. Any sum ordered to be paid by the Court pursuant to this  
5 Order as reimbursement for out-of-pocket costs shall be prorated among the plaintiffs  
6 whose claim payments were deposited, in part, in the MDL 1407 Fee and Cost Account.

7  
8 12. Nothing in this Order will limit the amount of attorneys' fees and costs, in  
9 the form of a percentage award or otherwise, which may be awarded by the Court in the  
10 event of recovery in any action certified as a class action under *Fed.R.Civ.P.* 23.

11 13. The Court is not making the determination by this Order that the Common  
12 Benefit Attorneys shall receive any specific sum as payment of counsel fees and  
13 reimbursement of litigation expenses. Such a determination is specifically reserved for  
14 an appropriate time following petitions related to such an award. Rather, this Order is  
15 merely intending to develop a mechanism for the creation of a fund from which the  
16 amount of fees and costs which the Common Benefit Attorneys are ultimately entitled  
17 may be awarded and paid with reliability.

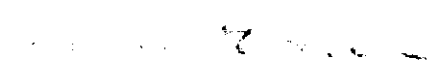
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19 14. At such time as the MDL 1407 Fee and Cost Account contains balances  
20 that are not necessary to be retained for the payment of fees and costs, the Court will,  
21 upon applicable provisions of law, following a hearing, make refunds on an equitable  
22 basis, or if such balances are of small amounts, enter such orders concerning the  
23 disposition of such funds as are appropriate under the law.

1  
2  
3 SO ORDERED this 8th day of July, 2002.  
4

5  
6   
7 Honorable Barbara Jacobs Rothstein  
8 United States District Judge  
9

10 Presented by:

11 *Levinson Friedman, P.S.*  
12

13 By   
14 Lance E. Palmer  
15 WSBA #18141  
16 **Plaintiffs' Liaison Counsel**  
17  
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# Exhibit 1



THE HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE  
(PPA) PRODUCTS LIABILITY  
LITIGATION.

MDL Docket No. 1407

AGREEMENT BETWEEN PSC  
AND STATE COURT ATTORNEY

This document relates to all actions.

**AGREEMENT**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2002, by and  
between the Plaintiffs' Steering Committee ("PSC") appointed by the United States  
District Court for the Western District of Washington in MDL Docket No. 1407 and  
**[FILL IN THE NAME OF THE FIRM EXECUTING THE AGREEMENT]** (hereinafter "the  
State Attorneys").

WHEREAS the United States District Court for the Western District of  
Washington has appointed Counsel to serve as members of the PSC to facilitate the  
conduct of pretrial proceedings in the federal actions relating to the ingestion of PPA;  
and

1  
2 WHEREAS the PSC in association with other attorneys working for the common  
3 benefit of plaintiffs have developed or are in the process of developing work product  
4 which will be valuable in the litigation of state court proceedings involving PPA induced  
5 injuries, including:

- 6 a. CD-ROMs and a virtual depository containing images of the key  
7 documents selected by the PSC from the document productions of  
8 the defendants and third-parties in MDL 1407;  
9 b. a bibliographic database providing a "coded" index of such key  
10 documents;  
11 c. the depositions of each generally applicable fact witness taken in  
12 MDL 1407 and in any coordinated state-court actions in the form of  
13 paper transcripts, text searchable computer disks and CD-ROMs  
14 and videotapes of videotaped depositions; and  
15 d. time-lines, casts of characters, and other work product relating to  
16 the facts at issue in MDL 1407;

17 which will collectively be referred to as the "PSC Work Product"; and

18 WHEREAS the State Attorneys are desirous of acquiring the PSC Work Product  
19 and establishing an amicable working relationship with the PSC for the mutual benefit of  
20 their clients;

21 NOW, THEREFORE, in consideration of the covenants and promises contained  
22 herein, and intending to be legally bound hereby, the parties agree as follows:

23 1. With respect to each client who they represent in connection with a PPA  
24 related claim, other than clients with claims filed or pending in any federal court, each of  
25 the State Attorneys shall deposit or cause to be deposited in an MDL 1407 Fee and  
26 Cost Account established by the District Court in the MDL three (3) percent of the gross  
27 amount recovered by each such client. For purposes of this Agreement, the gross  
28

1 amount of recovery shall include the present value of any fixed and certain payments to  
2 be made to the plaintiff or claimant in the future.

3  
4 2. The State Attorneys, on behalf of themselves, their affiliated counsel, and  
5 their clients, hereby grant and convey to the PSC a lien upon and/or a security interest  
6 in any recovery by any client who they represent in connection with any PPA induced  
7 injury, to the full extent permitted by law, in order to secure payment in accordance with  
8 the provisions of paragraph 1 of this Agreement. The State Attorneys will undertake all  
9 actions and execute all documents which are reasonably necessary to effectuate and/or  
10 perfect this lien and/or security interest.

11  
12 3. This Agreement shall apply to each and every claim or action arising from  
13 the ingestion of PPA in which the State Attorneys have a right to a fee recovery.

14  
15  
16 PLAINTIFFS' STEERING COMMITTEE

17  
18 *Levinson Friedman, P.S.*

19  
20  
21 \_\_\_\_\_  
22 Lance E. Palmer  
23 WSBA #18141  
24 **Plaintiffs' Liaison Counsel**

25  
26 \_\_\_\_\_  
27 [State Court Attorney]

1  
2 THE HONORABLE BARBARA JACOBS ROTHSTEIN  
3  
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6 ENTERED  
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8 2002 JUN  
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11 UNITED STATES DISTRICT COURT  
12 WESTERN DISTRICT OF WASHINGTON  
13 AT SEATTLE

14 IN RE: PHENYLPROPANOLAMINE  
15 (PPA) PRODUCTS LIABILITY LITIGATION

MDL NO. 1407

16 CERTIFICATE OF SERVICE

17 I, Kaj Trapp, declare under penalty of perjury under the laws of the State of  
18 Washington that the following is true and correct.

19 I am a citizen of the United States and a resident of King County, Washington. I  
20 am over the age of 18 years and am not a party to the within cause. My business mailing  
21 address is that of Levinson Friedman, P.S., Pacific Building, 720 Third Avenue, Suite 1800,  
22 Seattle, WA 98104.

23 On July 3, 2002, I caused true and correct copies of the following documents:

- 24 1. AMENDED CASE MANAGEMENT ORDER NO. 8, ESTABLISHING  
25 PLAINTIFFS' LITIGATION EXPENSE FUND TO COMPENSATE AND  
26 REIMBURSE ATTORNEYS FOR SERVICES PERFORMED AND  
EXPENSES INCURRED FOR COMMON BENEFIT

27 to be served by electronic-mail upon the following parties:  
28

CERTIFICATE OF SERVICE  
(MDL NO. 1407) - Page 1

LEVINSON FRIEDMAN, P.S.  
PACIFIC BUILDING  
720 THIRD AVENUE, SUITE 1800  
SEATTLE, WA 98104-1845  
(206) 624-8844  
fax (206) 624-2912

ORIGINAL


1  
2 **See Exhibit A**

3 And to be served by ABC Legal Messengers, Inc. by hand delivery, and by electronic mail upon  
4 the following counsel of record:

5 Joseph D Hurson  
6 LANE POWELL SPEARS LUBERSKY LLP  
7 1420 Fifth Ave, Suite 4100  
8 Seattle, WA 98101-2338  
9 HursonD@LanePowell.com

10 Douglas A. Hofmann  
11 WILLIAMS, KASTNER & GIBBS PLLC  
12 4100 Two Union Square  
13 Seattle, WA  
14 dhofmann@wkg.com

15 Executed on July 3, 2002, at Seattle, Washington.

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Kaj Trapp

# Exhibit A

First	Middle	Last	Suffix	Firm	City	State	Email
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